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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,204

04/09/2004

Michael Kassipillai Gunaratnam

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EXAMINER

DOUGLAS, STEVEN O

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,204	<b>Applicant(s)</b> GUNARATNAM, MICHAEL KASSIPILLAI	
	<b>Examiner</b> /Steven O. Douglas/	<b>Art Unit</b> 3771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 13-17 and 23-28 is/are rejected.
- 7) ☒ Claim(s) 2-12 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1,13,14,15,17,23,25,26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Kwok'961 et al.

The Kwok et al. reference discloses a respiratory mask 14,16 (see Figs. 9-14) comprising a mask frame 16, a forehead support member 12 with associated teeth 40 that cooperate with mating catches 34 and a forehead pad 26 attached to the mask frame via a living hinge 62,

wherein the pad is rotatable with respect to the mating catches 34 which can be considered a cooperating part of the forehead support member.

In regard to claim 13 and 25, the foldable beam can be considered elements 12 and 14 which define the side segments.

In regard to claim 14, see ring shaped cushion 19 that has integral hinge portion where the cushion flexes and can be considered at least partially accordion shaped in its broadest sense.

In regard to claim 15, the cushion and mask frame are integral in that the two components cooperate together to work as single unit.

In regard to claim 17, the method of manufacture (i.e. molded) is not germane to the issue of the patentability of the apparatus claim.

In regard to claim 26, the top segment can be considered the portion of element 14 which projects 90 degrees from the living hinge 62.

Claims 13 and 25-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Gunaratnam'182.

The Gunaratnam'182 reference discloses a respiratory mask 14 comprising a mask frame (12,14) and a foldable beam 22.

In regard to claim 25 and 26, the major portions of elements 22 define first and second side segments and where the two elements overlap proximate the pivot or fold axis 28 defines the top segment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok'961 et al.

The Kwok et al. reference discloses a mask (supra) but does not disclose the mask frame and cushion as being a single piece. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the mask frame and cushion as a single piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U. S. 164 (1893).

Claims 8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok'961 et al. in view of Gleason et al. (US Pat. 6,016,804).

The Kwok et al. reference discloses a mask (supra), including an air inlet portion that accepts the connection of an air inlet hose 18, but does not disclose the air inlet portion being connected to the mask frame by another living hinge. The Gleason et al. reference discloses another mask that incorporates multiple living hinges (see hinges 50 and 45) in connecting components to the mask frame. It would have been obvious to one of ordinary skill in the art at

the time the invention was made to connect any number of the components of the Kwok et al. reference (i.e. including the air inlet portion) since such connections are conventionally known as shown by Gleason et al. and the incorporation of such living hinges would have a reasonable amount to predicted success to one of ordinary skill in the mask arts.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kopacko et al., Scumacher and Starr et al. references pertain to other masks with associated forehead padding.

Claims 2-12 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/  
Primary Examiner  
Art Unit 3771

SD  
2/6/08